

1 2 IN THE MATTER OF UNFAIR LABOR PRACTICE NO. 6-77)

2 3 MONTANA EDUCATION ASSOCIATION, HELENA,
3 4 MONTANA,)

4 5 Complainant,)

5 6 TO-) FINAL ORDER

6 7 MISSOULI COUNTY SCHOOL DISTRICT NO. 55 and
7 8 55R, ROUNDUP, MONTANA,)

9 10 Defendant.)

10 11 A proposed Findings of Fact, Conclusions of Law and Order was issued by
11 12 Hearing Examiner, Mr. Jeff Andrews, on June 16, 1977.

12 13 Exceptions to that Proposed Order were filed by Defendant, Missoula County School District #55 and 55R, Roundup, Montana, and on August 12, 1977, oral argument was heard before the Board of Personnel Appeals.

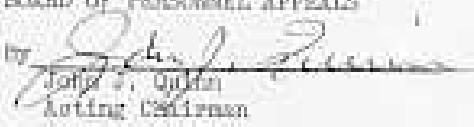
14 15 After reviewing the record and considering the briefs and oral arguments,
15 16 the Board makes the following Order:

16 17 1. IT IS ORDERED, that the Exceptions to the Hearing Examiner's
17 18 Proposed Findings of Fact, Conclusions of Law and Proposed Order are denied.

19 20 2. IT IS ORDERED, that this Board therefore adopts the Findings of
20 21 Fact, Conclusions of Law and Order issued by the Hearing Examiner.

21 22 Dated this 24th day of August, 1977.

23 24 BOARD OF PERSONNEL APPEALS

25 26 by 
26 27 John J. Quinn
27 28 Acting Chairman

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1 BEFORE THE BOARD OF PERSONNEL APPEALS

2 IN THE MATTER OF UNFAIR LABOR PRACTICE
CHARGE #5-77:

4 MONTANA EDUCATION ASSOCIATION, HELENA,
MONTANA.

5 Complainant,) FINDINGS OF FACT
6 -vs-) CONCLUSIONS OF LAW,
7 MONTGOMERY COUNTY SCHOOL DISTRICT #59) AND
8 & 55H, ROUNDUP, MONTANA,) RECOMMENDED ORDER
9 Defendant.)

On March 3, 1977, the Montana Education Association, the exclusive representative for teachers in the Musselshell County School District #55 and 55-H, filed an unfair labor practice charge with the Montana State Board of Personnel Appeals against the Musselshell County School District #55 and 55-H.

16 The charge alleges that Sections 59-1605(1) (e) and (3)
17 R.C.M. 1987, have been violated in that the District has failed
18 to bargain in good faith with respect to wages, hours, fringe
19 benefits and other conditions of employment.

A hearing in the above captioned matter was held on May 5, 1977, in the Musselshell County Courthouse, Roundup, Montana. The Montana Education Association was represented by Ms. Emilie Loring of the law firm of Hillley and Loring, Great Falls, Montana; the Musselshell School District was represented by Mr. John L. Pratt, County Attorney of Musselshell County.

As the duly appointed hearing examiner of the Board of Personnel Appeals, I conducted the Hearing in accordance with the provisions of the Montana Administrative Procedures Act (Sections 82-4201 to 82-4225, R.C.M. 1947).

30 After a thorough review of the record of this case, I
31 make the following:

32 | P a g e **CHAPTERS OF FAITH**

1 1. That the School District did, in letters to teachers,
2 in the School District Policy Handbook, and in personal conver-
3 sations with teachers, made known that no non-tenured teachers
4 would be rehired for the 1977-1978 school year unless they
5 established residency within the district. (See Complaints
6 Exhibits #1 and #3).

7 2. That no negotiations between the School District
8 and the exclusive representative of the teachers on the subject
9 of a residency requirement have been held.

10 DISCUSSION

Only one question need be answered, one interpretation made, in the dispute at question. The facts of the case have not been subject to argument; a residency requirement has been imposed upon the teachers in the Mansfield School District. The question is whether an unfair labor practice has been committed and the answer lies in the interpretation of Sections 59-1605(1) (e) and (j), R.C.M. 1947, which define the obligation of employer and employee representatives to negotiate with "respect to wages, hours, fringe benefits, and other conditions of employment."

It is my opinion that the inclusion of a residency requirement within the meaning of "other conditions of employment" is consistent with the intent of the Montana Legislature when the statute was drafted. The residency requirement is therefore a mandatory subject of bargaining.

This question has not been previously litigated in this jurisdiction, so for guidance we can look to a number of decisions handed down in the State of Michigan. The courts in Michigan have been charged with interpreting a statute very similar to that existing in Montana. While the Michigan law refers to "terms and conditions of employment" and the Montana law refers only to "conditions of employment", both were written from the model of the National Labor Relations Act, and the difference seems to arise from differing preferences in terminology.

minology rather than differences in meaning. The Michigan rulings have held that a residency requirement is in fact a mandatory subject of bargaining.¹

When a situation exists where a unilateral change is made in a condition which is a mandatory subject of bargaining, the National Labor Relations Board has held that such an action is a per se failure to bargain in good faith.³ Such a situation exists in ULP #6-77 and it is therefore my opinion that a violation of Sections 59-1605(1) (e) and (3) has been committed.

CONCLUSIONS OF LAW

The allegation that the Musselshell County School District #55 and 55-E, has engage in an unfair labor practice within the meaning of Sections 59-1605(1) (e) and (3), B.C.M. 1947, by refusing to negotiate in good faith with an exclusive representative, has been sustained.

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18 It is hereby ordered that the Russellville County District
19 #55 and 55-II shall:

20 1. Cease and desist from enforcement of the stated policy
21 of requiring teachers in the district schools to reside
22 within the district until such time as this condition of
23 employment is decided through the process of collective
24 bargaining with the exclusive representative of the teachers.
25 2. (a) Notify, in writing, all teachers employed in the
26 district schools who would be affected by a re-
27 quirement of residency, of the substance of this
28 order.

Policemen's Association, a City of Detroit, 214 N.W.
Box 255000-25 M-13241.

Police Officers Association v. City of Pontiac, 329 U.S.
23, 759, 87 L.R.B.M. 2540 (1974).

³ RLEB in Environ. Pollut. B, 7-20, 80 LBBM II D2 (1962).



